

## HUMAN SERVICES BOARD

# INTRODUCTION

## FINDINGS OF FACT

<sup>1</sup> The petitioner's attorney did not object to this hearsay evidence.

3. The Department investigated the report, including interviewing the petitioner and the two children. The children were not called as witnesses at the hearing. The investigator's notes indicate that the children alleged that on a day they had accompanied their father (petitioner) trapping, they had found a fisher in a trap. They stated the petitioner had clubbed it while it was still in the trap to make sure it was dead, after which they all returned to the car, placed the fisher in the car, and went to check the next trap.

4. The investigator's notes indicate that the boys gave confusing and conflicting versions of the event. One said he never saw the fisher move. The other said it was "running around" in the car. They gave conflicting accounts of whether the fisher had been placed in the front or back of the car, on the seat or the floor, and where each of them had been sitting.

5. The investigator recalled that during the investigation the petitioner did not deny placing the fisher in the car with the children. Based on his interviews the investigator concluded that the petitioner had placed the children at risk of harm by having them ride in a car with a dangerous animal that was still alive.

6. At the hearing the petitioner testified in detail about the incident. He stated that he is an experienced trapper and that his sons had frequently accompanied him (and still do) when he checked his traps. He does not deny that fishers are very dangerous animals.

7. The petitioner testified that on the day in question he had taken his sons in the family station wagon to check traps because the truck he normally used was being repaired. He stated that the three of them had found a fisher in one of the traps. The petitioner stated he clubbed the animal on the head in accordance with accepted trapping practices and then checked to see if it was alive. When he was satisfied it was dead, he brought the animal back to the car and placed it on the floorboard under the front passenger seat. He stated he then walked with the boys to check the next trap, about a 100 yards from the car. When they returned to the car and opened the door he thought he saw the fisher move slightly. He stated he closed the door, ordered the boys to stand back, and returned to the car and placed the fisher in a trap designed to immobilize and kill it. He states that he is still not sure whether the fisher was ever really alive in the car, but that he did not want to take a chance.

8. The petitioner denied that either he or the boys ever got into the car once the fisher had been placed on the floorboard. He stated that the boys were very excited about the incident.

9. The petitioner testified that since he got custody of the boys his ex-wife has made several complaints to the Department, none of which (except this one) was found to have merit. The petitioner still has custody of the boys, and they continue to frequently accompany him when he checks traps.

10. The hearing officer deemed the petitioner's testimony to be entirely credible. The only thing in the investigator's notes that directly contradicts the petitioner's testimony is that one boy reportedly said that they were all riding in the car with the then-immobile fisher when they went to the next trap, and then returned to the car to find the fisher moving. Everything else in the investigator's conclusions is based on his own inferences from those interviews. As noted above, however, the boys did not appear at the hearing, and this evidence was entirely hearsay. Given the many patent exaggerations and conflicts in the boys' versions of the events as reported in the

investigator's notes, virtually nothing in those notes can be deemed reliable at this time.

11. It cannot be found that there is any credible evidence that the petitioner ever placed his children in the car with a live fisher.

ORDER

The Department's decision substantiating the report of neglect in question is reversed.

REASONS

Abuse and neglect are specifically defined in the statute in pertinent part as follows:

(2) An "abused or neglected child" means a child whose physical health, psychological growth and development or welfare is harmed or is at substantial risk of harm by the acts or omissions of his or her parent or other person responsible for the child's welfare.

. . .

(4) "Risk of harm" means a significant danger that a child will suffer serious harm other than by accidental means, which harm would be likely to cause physical injury, neglect, emotional maltreatment or sexual abuse.

33 V.S.A. § 4912

In this case, there is no credible evidence that the petitioner placed his children at risk of harm by placing

them in dangerous proximity to a live wild animal.<sup>2</sup> Thus, the Department's decision substantiating the report in question must be reversed.

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<sup>2</sup> The Department does not appear to maintain that placing a child in proximity with a *dead* animal constitutes risk of harm. In this case, there is no allegation that the petitioner, an experienced trapper, had any basis to believe the fisher was alive when he placed it in the car. Thus, even if it could be found that the children actually got into the car with the animal, it would be difficult to conclude that the risk of harm would have been anything other than "accidental".